

## Message Text

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ACTION SCI-06

INFO OCT-01 SPC-03 L-03 EA-11 EB-11 CIAE-00 INR-10 NSAE-00

RSC-01 NSC-10 DODE-00 COME-00 EPA-04 CEQ-02 SCEM-02

INT-08 TRSE-00 DOTE-00 AEC-11 HUD-02 NSF-04 NASA-04

OMB-01 ISO-00 SS-20 AECE-00 DRC-01 /115 W

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P 100913Z DEC 73

FM AMEMBASSY TOKYO

TO SECSTATE WSSHDC PRIORITY 8661

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E.O. 11652: N/A

TAGS: ENRG, TECH, JA

SUBJ: JAPANESE RESPONSE TO U.S. DRAFT OF ENERGY R&D AGREEMENT

REF: TOKYO 15801

SUMMARY: FOLLOWING ARE GOJ VIEWS AND EMBASSY COMMENTS ON GOJ DRAFT COUNTERPROPOSAL ON ENERGY R&D AGREEMENT. END SUMMARY.

1. REFTEL TRANSMITTED TEXT OF JAPANESE COUNTERPROPOSAL TO U.S. DRAFT ENERGY R&D AGREEMENT BETWEEN JAPAN AND U.S. IN CONVEYING TEXT DEC. 5, UDAGAWA\*, HEAD OF INTERNATIONAL RESOURCES DIVISION OF FONOFF, TOLD ECON/COUNS THAT GOJ REGRETTED LENGTHY DELAY IN COMMENTING ON U.S. DRAFT BUT NOTED NUMEROUS BUREAUCRATIC PROBLEMS HAD HAD TO BE THRASHED OUT BETWEEN FONOFF, MITI AND SCIENCE & TECHNOLOGY AGENCY.

2. UDAGAWA AND HIS DEPUTY, KATAKURA, THEN EXPLAINED RATIONALE FOR SIGNIFICANT CHANGES FROM U.S. DRAFT AS FOLLOWS:

(A) PREAMBLE -- THIS WAS STREAMLINED TO CORRESPOND TO WORKING OF PARAGRAPH ELEVEN OF COMMUNIQUE OF US-JAPAN SUMMIT MEETING.

(B) ARTICLE I - PHRASE QUOTE THROUGH THEIR APPROPRIATE LIMITED OFFICIAL USE

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AGENCIES UNQTE DELETED FROM U.S. DRAFT BECAUSE FONOFF BE-

LIEVES ARTICLE IV OF JAPANESE DRAFT COVERS THIS POINT.

(C) ARTICLE II - REVIEW OF CURRENT AND FUTURE ACTIVITIES  
DELETED BECAUSE FONOFF BELIEVES IT ADEQUATELY COVERED IN  
ARTICLE V JAPANESE DRAFT. SUBPARAGRAPH (E) SHORTENED BECAUSE  
IT NOT NECESSARY MAKE SPECIFIC REFERENCE TO CONSTRUCTION AND  
OPERATION OF FACILITIES.

(D) ARTICLE III - ORDER OF PROPOSED AREAS OF COOPERATION  
CHANGED TO GROUP ITEMS INTO CATEGORIES OF ENERGY CONVERSA-  
TION, TRANSMISSION AND CONSERVATION. BRACKETED ITEMS ARE  
THOSE WHICH SOME ELEMENTS OF GOJ WOULD LIKE TO INCLUDE (BECAUSE  
OF LACK OF DEFINITE GOJ POSITION HERE AND IN ARTICLE VI UDA-  
GAWA REFERRED TO GOJ DRAFT AS QTE SEMI-CONSENSUS COUNTERPROPO-  
SAL UNQTE). FONOFF PROMISED ADVISE EMBASSY SOONEST WHETHER  
THESE ITEMS SHOULD BE INCLUDED IN GOJ DRAFT OR NOT.) SEVERAL  
ITEMS IN U.S. DRAFT WERE CONSOLIDATED UNDER GOJ DRAFT ITEM (I)  
- UTILIZATION OF WASTE MATERIALS. ALSO, U.S. DRAFT (H) THROUGH  
(K) DELETED BECAUSE GOJ NOT FAR ENOUGH ADVANCED TO CARRY ON  
MEANINGFUL COOPERATION IN THESE AREAS.

(E) ARTICLE IV - CONCEPT OF IMPLEMENTING AGREEMENTS CHANGED  
TO IMPLEMENTING ARRANGEMENTS TO TAKE CARE OF FONOFF PROBLEMS  
WITH CONCEPT OF GOJ AGENCIES NEGOTIATING AGREEMENTS WITH FOR-  
EIGHT GOVERNMENTS.

(F) ARTICLE V - REFERENCE TO POINT OF COORDINATION DELETED  
IN AN EFFORT AVOID DIRECT BUREAUCRATIC CONFRONTATION WITHIN  
GOJ OVER WHICH AGENCY WOULD BECOME COORDINATING POINT.

(G) ARTICLE VI - RE PARA 1, GOJ FINDS QTE WORLD SCIENTIFIC  
COMMUNITY UNQTE TO BE TOO VAGUE AND SUGGESTS IT BE DELETED.  
TREATIES BUREAU OF FONOFF QUESTION WHETHER PATENTS BELONGING  
TO GOVERNMENT CAN BE TRANSFERRED BY QUOTE ARRANGEMENTS UNQTE  
REFERRED TO IN ARTICLE IV. TREATIES BUREAU ALSO BELIEVES  
QTE KNOW-HOW UNQTE MUST BE DELETED FROM JAPANESE DRAFT SINCE  
GOJ HAS NO LAWS WHICH PROVIDE FOR TREATMENT OF KNOW-HOW OR  
SOFTWARE (ONLY PATENTS, INDUSTRIAL PROPERTY, DESIGNS AND  
TRADEMARKS ARE PROTECTED). WHILE TREATIES BUREAU FAVORS COM-  
PLETE DELETION OF PARA TWO, UDAGAWA IMPLIED POSSIBILITY OF  
COMPROMISE ON WORDING.

(H) ARTICLE IX - GOJ PREFERS THAT AGREEMENT REMAIN IN  
FORCE FOR INDEFINITE PERIOD SINCE IT BELIEVES SERIOUS LEGAL  
QUESTIONS WOULD ARISE RE RESULTING ARRANGEMENTS IF BASIC  
AGREEMENT WERE TERMINATED.

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3. UDAGAWA EXPRESSED HOPE THAT USG COMMENTS ON GOJ DRAFT  
WOULD BE AVAILABLE IN NEAR FUTURE SO THAT NEGOTIATIONS BETWEEN  
EMBASSY AND FONOFF ON FINAL DRAFT COULD BEGIN. ECON/COUNS NOT-  
ED JAPANESE COUNTERPROPOSAL RETAINED 1973 AS DATE FOR CONCLU-  
SION OF AGREEMENT AND PROMISED USG WOULD MAKE BEST EFFORT TO  
RESPOND AS SOON AS POSSIBLE.

4. DURING COURSE OF DISCUSSION ECON/COUNS MADE SOME PERSONAL OBSERVATIONS ON CERTAIN POINTS IN COUNTERPROPOSAL AND REFERRED TO PREVIOUS EXPLANATION OF USG RATIONALE FOR PROVISIONS OF ARTICLE V. HOWEVER, HE DID NOT ATTEMPT TO NEGOTIATE WITH FONOFF ON THIS OCCASION ON POINTS IN STATE 214568 AND 207799 SINCE POINT-BY-POINT RESPONSE BY USG TO GOJ DRAFT WOULD BE MORE EXPEDITIOUS WAY OF PROCEEDING.

5. EMBASSY'S COMMENTS ON GOJ COUNTERPROPOSAL AS FOLLOWS:

(A) ARTICLE II: JAPANESE VERSION OF SUBPARA (C) SUBSTITUTES QTE EXCHANGE UNQTE FOR QTE VISITS UNQTE. EMBASSY RECOMMENDS THAT BOTH CONCEPTS BE PRESERVED BY INSERTION OF QTE VISITS UNQTE AT BEGINNING OF PARAGRAPH IN JAPANESE VERSION. OMISSION OF SUBPARA (D) OF US DRAFT FROM JAPANESE VERSION RESULTS IN LOSS OF USEFUL CONCEPT, AND EMBASSY RECOMMENDS WE PROPOSE ITS RETENTION.

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ACTION SCI-06

INFO OCT-01 SPC-03 L-03 EA-11 EB-11 CIAE-00 INR-10 NSAE-00

RSC-01 NSC-10 DODE-00 COME-00 EPA-04 CEQ-02 SCEM-02

INT-08 TRSE-00 DOTE-00 AEC-11 HUD-02 NSF-04 NASA-04

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(B) ARTICLE III: EMBASSY BELIEVES THAT, IN GENERAL, SHORTENING OF LIST OF COOPERATIVE TOPICS IS DESIRABLE STEP, SINCE LIST ILLUSTRATIVE AND NON-LIMITING IN ANY CASE, AND SHORTER LIST IS PROBABLY MORE REALISTIC REFLECTION OF COOPERATIVE ACTIVITY ATTAINABLE IN SHORT-TERM. EMBASSY SEES NO EVIDENCE THAT, IN SHORTENING LIST, JAPANESE HAVE PREFERENTIALLY ELIMINATED FIELDS IN WHICH THEY ARE ADVANCED WHILE RETAINING THOSE

IN WHICH U.S. AHEAD. ON CONTRARY, JAPANESE LIST INCLUDES ALL PRINCIPAL TOPICS OF JAPANESE "PROJECT SUNSHINE" ON WHICH JAPANESE ENERGY RESEARCH AND DEVELOPMENT EFFORTS WILL BE CONCENTRATED. PERHAPS ONLY EXCEPTION, WHICH EMBASSY RECOMMENDS WE QUESTION, IS JAPANESE ELIMINATION OF STORAGE BATTERIES. EMBASSY SUGGESTS WE MAKE ADDITION OF "FUEL CELLS" CONDITIONAL ON REMOVAL OF "STORAGE BATTERIES." JAPANESE ADDITION OF LIQUIFICATION TO TOPIC ON "COAL GASIFICATION" APPEARS DESIRABLE TO EMBASSY, SINCE COAL LIQUIFICATION WILL BE PRINCIPAL THEME OF ENERGY RESEARCH AND DEVELOPMENT IN BOTH U.S. AND JAPAN.

JAPANESE ADDITION OF TOPIC ON "HYDROGENOUS ENERGY APPLICATION" REFLECTS STRONG EMPHASIS GIVEN THIS FIELD IN JAPAN. JAPANESE CONCEPT IS THAT, IN VIEW OF DEFICIENCY OF CARBONACEOUS ENERGY RESOURCES, JAPAN SHOULD EXPLORE USE OF HYDROGEN, PERHAPS PRODUCED ELECTROLYTICALLY, AS FUEL. SINCE JAPANESE PROGRAM IN LIMITED OFFICIAL USE

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THIS AREA WILL PROBABLY EXCEED THAT OF U.S., EMBASSY RECOMMENDS ACCEPTANCE THIS TOPIC.

(C) ARTICLE V: ALTHOUGH WE ASSUME PROPOSED ELIMINATION OF PROVISION FOR DESIGNATION OF POINT OF COORDINATION AND ELIMINATION OF SECOND SENTENCE ARE ACCEPTABLE TO US (STATE 214568), WE RECOMMEND THAT WE PROCEED ALONG LINES PARA 4 OF STATE 214568 PARTICULARLY IDEA OF EXCHANGING SUBSEQUENT LETTERS TO DEFINE METHOD OF COORDINATION, BEFORE EXPLORING OTHER METHODS OF COMPROMISE.

(D) EMBASSY BELIEVES DISTINCTION SHOULD BE MADE BETWEEN INFORMATION DEVELOPED UNDER NATIONAL PROGRAMS IN THE TWO COUNTRIES AND THAT DEVELOPED JOINTLY IN COOPERATIVE R&D ACTIVITIES. DISSEMINATION TO THIRD PARTIES OF FORMER INFORMATION WOULD SEEM TO BE INEQUITABLE. EXCHANGE OF LATTER OBVIOUSLY COMPLEX; AS SUCH, WE BELIEVE THAT FURTHER DISSEMINATION SHOULD BE CONSIDERED ON CASE-BY-CASE BASIS UNDER EACH IMPLEMENTING AGREEMENT. FOLLOWING WORDING MIGHT BE SUITABLE: QTE THE DISPOSITION OF ALL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF JOINT PROJECTS OR PROGRAMS UNDERTAKEN PURSUANT TO ARTICLE II(E) OF THIS AGREEMENT WILL BE PROVIDED FOR IN THE IMPLEMENTING AGREEMENTS FOR SUCH PROGRAMS AND PROPERTY UNQTE.

(E) ARTICLE IX: EMBASSY PREFERS GOJ'S FORMULATION OF THIS ARTICLE BECAUSE IT PROVIDES FOR INDEFINITE CONTINUATION OF AGREEMENT IN ABSENCE OF POSITIVE ACTION BY EITHER PARTY -- WHICH WOULD BE IN OUR INTERESTS IN VIEW OF LONG TIME CONSTANT OF ENERGY R&D PROGRAMS AND DUBIOUS JAPANESE TRACK RECORD IN TAKING AFFIRMATIVE ACTION ON AGREEMENTS -- AND IT LESSENS POSSIBILITY OF NECESSITY TO FACE PROBLEM OF VALIDITY OF SUBSIDIARY ARRANGEMENTS AFTER EXPIRATION OF UMBRELLA AGREEMENT.

ACTION REQUESTED: INSTRUCTIONS ON EMBASSY'S RESPONSE TO FONOFF.  
SHOESMITH

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## Message Attributes

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**TAGS:** ENRG, TECH, JA  
**To:** STATE  
**Type:** TE  
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